

Office of the New York State Comptroller

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Property Tax Cap

Summary of the Legislation

The information provided below is intended for general discussion purposes only. To view the actual legislation, click here www.osc.state.ny.us/localgov/realprop/pdf/parta-chapter97.pdf

Chapter 97 of the Laws of 2011 established a tax levy limit (generally referred to as the tax cap) that affects all local governments (including counties, cities, towns, villages and fire districts) and school districts in New York State except New York City and the “Big Five” dependent city school districts (New York City, Yonkers, Buffalo, Rochester, and Syracuse).¹ The definition of “local government” also includes the following:

- Special districts established under articles 12 and 12-A of the Town Law and articles 5-A, 5-B or 5-D of the County Law (such as town or county water, sewer, refuse, drainage districts)
- Town improvement districts governed by separate boards of commissioners
- Town improvements such as water sewer, drainage improvements provided pursuant to Town Law articles 3-A (suburban towns) or 12-C
- Other “special districts.”

Under this law, the property taxes levied by affected local governments and school districts generally cannot increase by more than 2 percent, or the rate of inflation, whichever is lower. However, the law does allow local governments and school districts to levy an additional amount for certain excludable expenditures. An override of the levy limit is also permitted.

Key provisions in the legislation include:

- Commencing with fiscal years that begin in 2013, the ability to carryover “unused” levy limit amounts from one year into the next. If a local government or school district levies less than the levy limit in the prior fiscal year or school year, the unused portion of the prior years’ tax levy limit, up to 1.5 percent, can be carried over into the next fiscal year.
- An adjustment for certain tax base growth, such as new construction (i.e. “tax base growth factor”). This is driven by a “quantity change factor” which is calculated by the Department of Taxation and Finance and is used in determining the tax base growth factor, if any, for each local government and school district
- Exclusions from the levy limit for which a local government or school district may levy an additional amount. These include:
 - A tax levy necessary for expenditures for the coming fiscal year for employer contributions to local government and school district to the New York State and Local Employees’ Retirement System and the New York State and Local Police and Fire Retirement System caused by growth in the “system average actuarial contribution rate” in excess of 2 percentage points.

¹ The cities of Yonkers, Buffalo, Rochester and Syracuse, each levy a property tax on behalf of their dependent school districts. These cities are subject to the legislation.

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- A tax levy necessary for expenditures for the coming fiscal year for school district employer contributions to the New York State Teachers' Retirement System caused by growth in the "normal contribution rate" in excess of 2 percentage points.
- A tax levy necessary for expenditures resulting from court orders or judgments arising out of tort actions for any amount that exceeds 5 percent of the prior year tax levy.
- For school districts, the tax levy necessary to support the local portion of capital expenditures.
- Adjustments for costs and savings, as determined by the State Comptroller, due to the transfer of functions from one local government to another.
- New tax caps must be calculated when:
 - A local government dissolves and another assumes the debts, liabilities and obligations of the dissolved local government (such as a town might if a village within it dissolves). (Determined by the State Comptroller)
 - Two or more local governments consolidate into a single entity. (Determined by the State Comptroller)
 - Two or more school districts reorganize. (Determined by the Commissioner of Education)

Local governments are generally responsible for determining the applicable tax levy limit for the coming fiscal year and reporting any information necessary for calculating the limit to the State Comptroller prior to the adoption of its budget. In the case of school districts, this information must be submitted to the State Comptroller, the Commissioner of Education, and the Commissioner of Tax and Finance by March 1st each year.

The law also gives local governments and school districts the option to override the tax cap for the coming fiscal or school year. The process by which this can happen will differ depending on whether the entity is a local government or a school district:

- For example, in order to override, the governing board of a county, city, town, or village must first enact a local law. The local law must be approved by 60 percent of the total voting power of the governing board. In the case of a fire district, its governing board must adopt a resolution to override by 60 percent vote.
- School districts may override the tax levy limit by presenting to the voters a budget that requires a tax levy that exceeds the statutory limit. However, that budget must be approved by a 60 percent of the votes cast. If that budget does not pass, the school board may adopt a final budget with no growth in the tax levy from the prior year or resubmit the original or a revised budget. If a resubmitted budget is defeated, the district must adopt a final budget with a tax levy that is no greater than the levy of the prior year. Districts may also pass separate referenda on individual programs which, if they cause the levy to go over the cap, would each need to receive a 60 percent vote to pass.

In the event that a local government or school district levies more than the amount allowable under the tax levy limit due to a "clerical or technical error," the local government or school district must place the excess amount in a reserve (in accordance with requirements as prescribed by the State Comptroller). These funds, and any interest earned, must be used to offset the tax levy in the following fiscal year. Further, if upon post audit, the State Comptroller finds that a local government levied taxes in excess of the allowable limit, the local government must place an amount equal to the excess in the reserve.

For more detail on the Comptroller's role, click here www.osc.state.ny.us/localgov/realprop/pdf/overview.pdf